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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HOLCOMB, MARK

ART UNIT

PAPER NUMBER

3686

NOTIFICATION DATE

DELIVERY MODE

11/26/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/529,943	Applicant(s) MATSUMOTO ET AL.	
	Examiner MARK HOLCOMB	Art Unit 3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>26 July 2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. This action is in reply to the request for continued examination, hereinafter RCE1, filed 26 July 2010, on an application filed 1 April 2005, which claims priority to a PCT application filed 30 September 2003 and a foreign application with a filing date of 2 October 2002.
2. **Claims 32 and 36** have been amended.
3. **Claims 40 and 41** have been canceled.
4. **Claims 32-39** are currently pending.

Continued Examination Under 37 CFR 1.114

5. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 26 July 2010 has been entered.

Information Disclosure Statement

6. The information disclosure statement (IDS) submitted on 26 July 2010 has been considered by the Examiner to the extent indicated.

Response to Amendments

7. The rejection of **claims 40 and 41** under 35 USC 102(e) over the applied prior art are withdrawn in light of the cancellation of these claims.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. **Claims 32, 36, 38 and 39** are rejected under 35 U.S.C. 103(a) as being unpatentable over Teller in view of Ohlenbusch, et al. (U.S. Patent Number 6,493,652 B1), hereinafter Ohlenbusch.

As per **claims 32 and 36**, Teller discloses:

- *a measuring device carried by a subject, the measuring device measuring activity of the subject (Teller, Abstract and Fig. 1 and corresponding text), and*
- *a data processing device connected with the measuring device for mutual*

communication, the data processing device processing activity data obtained by the measuring device (Teller, Fig. 1 and corresponding text), wherein

- *the measuring device comprises a sensor adapted to measure movement of the subject, a memory storing the activity data showing intensity of activity of the subject, the intensity of activity having been determined from the measured movement of the subject (Teller, Fig. 2 #22 and corresponding text and Tables 1 and 2 in Columns 4-6), and*
- *a data transmitting part configured to transmit the activity data stored in the memory to the data processing device (Teller, Fig. 1 and corresponding text),*
- *the data processing device comprises a data receiving part configured to receive the activity data transmitted from the data transmitting part of the measuring device (Teller, Figures 1, 3 and 4, and corresponding text),*
- *and a data processing part configured to output a health management report based on the received activity data (see at least Teller, Figures 5-11 and corresponding text),*
- *the health management report includes a first graph displaying changes over time in the activity data for one day and a second graph displaying a total of time for each state of exercise for the one day, these total of time having been obtained by dividing the activity data obtained within the one day into a plurality of states of exercise corresponding to intensity of activity (Teller, Fig. 7, #205 and #210, and corresponding text),*

- *the first graph has a first vertical axis and a first horizontal axis, time being on the first horizontal axis, and the state of exercise being on the first vertical axis, (Teller, Fig. 7 and corresponding text),*
- *the second graph is disposed on right side of the first ~~graph~~, graph on a same sheet, ... (Teller, Fig. 7 and corresponding text).*

As per the limitation concerning *the first graph has a first vertical axis and a first horizontal axis*, Teller fails to explicitly disclose, but Ohlenbusch succeeds in disclosing wherein a *second graph has a second vertical axis and a second horizontal axis, the total of time for each state of exercise for the one day being on the second horizontal axis, and the state of exercise being on the second vertical axis*. See Ohlenbusch, Figures 8 and 38, and corresponding text. See also, Col. 68, lines 67 lines 50-60 where the total running and total walking time can be determined based on the measurement of the foot contact times, disclosed in Figure 8. Also see Ohlenbusch, Col. 72, lines 1-35 where the disclosed user graphs can be configured to display the total time spent running and/or walking – i.e., the total time expenditure for each state of exercise for the one day. As shown above, regarding the *for the one day* limitation, Teller discloses dual graphs detailing information *for the one day* at Fig. 7, #205 and #210.

As per the limitation concerning *the second graph is disposed on right side of the first ~~graph~~, graph on a same sheet*, Teller fails to explicitly disclose, but Ohlenbusch succeeds in disclosing wherein *first and second horizontal axes are disposed coaxially, and the length of the first*

vertical axis is equal to the length of the second vertical axis, and the scale of the first vertical axis is equal to the scale of the second vertical axis (see at least the page of Ohlenbusch that displays the two graphs of Figures 29A and 29B). Further, it is the Examiner's position that it is old and well known in the reporting arts to present two graphs on the same page coaxially, with the length and scale of the corresponding axes being equal.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Teller with the device for monitoring activity of a user in locomotion on foot of Ohlenbusch, because to do so would result in a system for monitoring health, wellness and fitness that "can be used across different training regimes" (Ohlenbusch, Col. 1, lines 60-61). Moreover, merely adding a well-known element into a well known system, to produce a predictable result to one of ordinary skill in the art, does not render the invention patentably distinct over such combination (see MPEP 2141).

As per **claim 38**, Teller/Ohlenbusch disclose claim 36, detailed above. Teller also discloses *a data processing part configured to delete certain activity data from the received activity data, and calculate a state of activity* (Teller, Figures 3 and 4 and corresponding text). Teller fails to explicitly disclose, but Ohlenbusch succeeds in disclosing a device wherein *the deleted activity data being: activity data wherein intensity of activity is outside a predetermined threshold range and is continued longer than a predetermined period, or activity data wherein a number of steps within a predetermined period is outside a predetermined threshold range, this number of steps*

having been calculated from the activity data (Ohlenbusch, Figures 7 and 8, and corresponding text). The motivation for making this modification of the teachings of Teller is the same as that set forth, above, in the rejection of **claim 36**.

As per **claim 39**, Teller/Ohlenbusch disclose claim 36, detailed above. Teller also discloses a data processing device *further comprising*:

- *a memory accumulating and storing the received activity data* (Teller, Figures 1, 3 and 4, and corresponding text),
- *an input part for inputting a period wherein state of activity of the subject is evaluated* (Teller, Figures 3 and 4 and corresponding text), *and*
- *a data processing part configured to calculate the state of activity of the subject from the activity data stored in the memory* (Teller, Figures 3 and 4 and corresponding text),
 - *these activity data having been obtained within the input evaluating period, wherein calendar data is inserted at a predetermined time period into the activity data received by the data receiving part* (Teller, Fig. 11 and corresponding text),
 - *and wherein the data processing part specifies activity data occurring within the input evaluating period out of the activity data stored in the memory, this specification being performed on the basis of the calendar data inserted into the activity data, and the data processing part calculates the state of activity from the specified activity data* (Teller, Fig. 11 and corresponding text).

12. **Claims 33-35 and 37** are rejected under 35 U.S.C. 103(a) as being unpatentable over Teller in view of Ohlenbusch, further in view of Hinnebusch (U.S. Pre-Grant Publication Number 2002/0055419 A1), hereinafter Hinnebusch.

As per **claims 33 and 37**, Teller/Ohlenbusch disclose claims 32 and 36, respectively, as detailed above. Teller further discloses *wherein the health management report includes the first graph ... for each day of a week ...* (Teller, Fig. 11 and corresponding text).

Teller fails to explicitly disclose, but Hinnebusch succeeds in disclosing a *second graph for each day of a week, and the first graph and the second graph are arranged in order in a vertical direction* (see at least the vertical display of multiple graphs for every day of the week of Hinnebusch, Figure 9 and corresponding text). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Teller/Ohlenbusch with the system to improve fitness training of Hinnebusch, because to do so would result in a system for monitoring health, wellness and fitness that “makes available a library of preprogrammed exercises, preferably with means for modify a routine ... or for creating a new routine” (Hinnebusch, paragraph 2). Moreover, merely adding a well-known element into a well known system, to produce a predictable result to one of ordinary skill in the art, does not render the invention patentably distinct over such combination (see MPEP 2141).

As per **claim 34**, Teller/Ohlenbusch/Hinnebusch disclose claim 33, detailed above. Teller further discloses:

- *wherein the measuring device further comprises a first timer and a first calendar part configured to produce a calendar date based on the time kept by the first timer (Teller, Col. 7, lines 1-37),*
- *wherein the data processing device further comprises*
 - *a second timer, a second calendar part configured to produce calendar data for correction, the calendar data for correction being based on the time kept by the second timer (Teller, Fig. 6 and corresponding text),*
 - *and a data transmitting part configured to transmit the calendar data for correction to the measuring device (Teller, Col. 9, lines 27-41),*
 - *and wherein the measuring device further comprises a data receiving part configured to receive the calendar data for correction, and the first timer is configured to be corrected on the basis of the received calendar data for correction (Teller, Col. 9, lines 27-41).*

As per **claim 35**, Teller/Ohlenbusch/Hinnebusch disclose claim 33, detailed above. Teller also discloses *wherein the measuring device further comprises*

- *a calendar data insert part configured to insert calendar data, which have been produced within each first predetermined period, into the activity data, the activity data being produced within each second predetermined period and being stored in the memory*

(Teller, Fig. 2 and corresponding text),

- *and an activity data correcting part configured to correct the activity data stored in the memory (Teller, Fig. 2 and corresponding text), the activity data correcting part being performed on the basis of a period for producing activity data, the period being specified from the calendar data inserted into the activity data, and*

With regard to the limitation *means for correcting the activity data*, Teller fails to explicitly disclose, but Ohlenbusch succeeds in disclosing *the activity data correcting part being performed on the basis of a period for producing activity data, the period being specified from the calendar data inserted into the activity data*, (Ohlenbusch, Figures 10-13 and corresponding text).

Teller also fails to explicitly disclose, but Ohlenbusch succeeds in disclosing *wherein the activity data correcting part performs the following*:

- *in a case where a plurality of items of activity data for same period are stored, anyone of these plurality of items of activity data is retained and the other items are deleted* (Ohlenbusch, Figures 14-19 and corresponding text),
- *and in a case where the activity data has a blank period in which no activity data has been produced, dummy data is inserted into the blank period* (Ohlenbusch, Figures 14-19 and corresponding text).

The motivation for making this modification of the teachings of Teller is the same as that set forth, above, in the rejection of **claim 32**.

Response to Arguments

13. Applicant's arguments filed in RCE1 on 26 July 2010 have been fully considered but are not persuasive.

14. The Applicant argues on page 7 of RCE1 that Teller in view of Ohlenbusch fail to disclose or to have rendered obvious the following limitation:

- *the second graph has a second vertical axis and a second horizontal axis, the total of time for each state of exercise for the one day being on the second horizontal axis, and the state of exercise being on the second vertical axis.*

The Examiner respectfully disagrees. As shown above, Ohlenbusch discloses graphs exercise states (pace) over time, as shown at Figures 8 and 38. See also, Col. 68, lines 67 lines 50-60 where the total running and total walking time can be determined based on the measurement of the foot contact times, disclosed in Figure 8. Ohlenbusch also discloses, at Col. 72, lines 1-35 where the disclosed user graphs can be configured to display the total time spent running and/or walking – i.e., the total time expenditure for each state of exercise for the one day. Further,

regarding the for the one day limitation, Teller discloses dual graphs detailing information for the one day at Fig. 7, #205 and #210.

Further, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Here, the combination of Teller and Ohlenbusch would have suggested to one of ordinary skill in the art to generate the displayed information of the Application, that of multiple graphs displaying activity levels over a day, and corresponding totals of those levels over a day.

15. The Applicant also argues that Teller in view of Ohlenbusch fail to disclose or to have rendered obvious the following excepted limitations:

- *the health management report includes a first graph displaying changes over time in the activity data for one day and a second graph displaying a total of time for each state of exercise for the one day,... the second graph is disposed on right side of the first ~~graph~~, graph on a same sheet, and the first and second horizontal axes are disposed coaxially, and the length of the first vertical axis is equal to the length of the second vertical axis, and the scale of the first vertical axis is equal to the scale of the second vertical axis.*

With regard to this argument, the Applicant also argues on page 9 that Ohlenbusch fails to disclose a time or total time on the horizontal axis. Although this is addressed in the response to the argument above, it does not exist in the excerpted limitation at issue.

The Examiner respectfully disagrees with this argument. As shown above, Teller discloses *the health management report includes a first graph displaying changes over time in the activity data for one day and a second graph displaying a total of time for each state of exercise for the one day* at Fig. 7, #205 and #210. There are two graphs in Teller both showing information captured over the same one day

See Teller, Col. 15, lines for a further explanation (emphasis added by Examiner):

Information regarding the individual user's movement is presented to the user through activity level web page 200 shown in FIG. 7, which may include activity graph **205** in the form of a bar graph, for monitoring the individual user's activities in one of three categories: high, medium and low intensity **with respect to a pre-selected unit of time**. Activity percentage chart **210**, in the form of a pie chart, may also be provided for showing the percentage of a **pre-selected time period, such as one day, that the user spent in each category**.

Therefore, the graphs displayed in Teller, Fig. 7 #205 and #210 display information over a pre-selected time period, such as one day. The graphs are displayed on the same page. The second graph displays a total of time for each state of exercise for the one day in the form of a pie chart that details the percentage of time of exercise. The Examiner notes that it is old and well known in the display arts to present a graph of total time as a percentage of total time in a pie chart or as a vertical display of time, as suggested by Ohlenbusch. Further, it is obvious to display or convert chart percentages to numbers and vice-versa.

Further, as shown above, Ohlenbusch discloses a display *first and second horizontal axes are disposed coaxially, and the length of the first vertical axis is equal to the length of the second vertical axis, and the scale of the first vertical axis is equal to the scale of the second vertical axis* (see at least the page of Ohlenbusch that displays the two graphs of Figures 29A and 29B). The fact that Ohlenbusch fails to specifically reference the display of Figures 29A and 29B on the same sheet is irrelevant for two reasons: 1. Teller is used to disclose the limitation concerning the display of two graphs on the same sheet, as discussed above. 2. The published application of Ohlenbusch literally discloses Figures 29A and 29B on the same sheet, coaxially.

Finally, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Further, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Also, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

16. In conclusion, all of the limitations which Applicant disputes as missing in the applied references, including the features newly added in RCE1, have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the collective teachings of Teller, Ohlenbusch and Hinnebusch, based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the remarks and explanations given in the preceding sections of the present Office Action and in the prior Office Actions (14 October 2009 and 28 April 2010), and incorporated herein.

Conclusion

17. Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Mark Holcomb**, whose telephone number is **571.270.1382**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are

unsuccessful, the Examiner's supervisor, **Jerry O'Connor**, can be reached at **571.272.6787**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

/M. H./
Examiner
21 October 2010
Art Unit 3686

/Gerald J. O'Connor/
Supervisory Patent Examiner
Group Art Unit 3686